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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/018,373

12/06/2001

Hans Bigalke

Merz 32 PCT US/dln

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7590

09/11/2007

THE FIRM OF HUESCHEN AND SAGE
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KALAMAZOO, MI 49007

EXAMINER

FORD, VANESSA L

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary

Application No.

10/018,373

Applicant(s)

BIGALKE ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

All participants (applicant, applicant's representative, PTO personnel):

(1) Vanessa L. Ford.

(3) Patrick Sage, Attorney of Record.

(2) Robert Zeman, Primary Examiner.

(4) Kathy Weiland, Attorney's Associate.

Date of Interview: 8/15/2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: all claims.

Identification of prior art discussed: Greene et al.

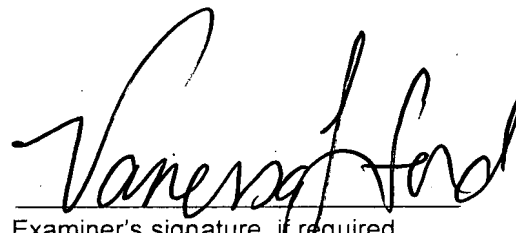
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: A discussion was held regarding the rejection under 35 U.S.C. 112 first paragraph. Applicant asked if addition of "effective amount" language in the claims, would be sufficient to overcome the rejection under 112 first paragraph. The Examiner's informed Applicant that the amended claim would have to be made of record and would be considered once made of record.

A discussion was held regarding the rejection under 35 U.S.C. 102(b) of Greene et al. The discussion focused on the interpretation of the term "purified" as recited in the Greene et al reference. Applicant argued that the "purified toxin" of Greene et al did not read on their invention because Greene et al do not teach or disclose a botulinum toxin composition "free of complexing proteins. Applicant further argued that it was not their burden to demonstrate that their invention was materially different from that disclosed in Greene et al since the Examiner's interpretation of the term "purified" was based solely on her "opinion". The Examiner pointed out to Applicant that the term "purified" as understood by the skilled artisan encompassed the removal of ancillary proteins as evidenced by Johnson et al (U.S. Patent No. 5,512, 547 published April 30, 1996) which teach that "type A neurotoxin is purified from the associated non-toxic proteins of the complex by a modification of the method of Tse et al (column 3). Thus, the state of the art teaches that purified botulinum toxin A is devoid of associated non-toxic proteins. Applicant was further advised that since the term "purified" did read on their invention it is their burden to demonstrate that their invention is materially different from that disclosed in the prior art reference as set forth in In re Best. Applicant stated that there was not a rejection of record citing Johnson et al. The Examiners informed the Applicant that Johnson et al was merely used to point out the state of the art and need not be placed in an art rejection. An agreement could not be reached in the interview and Applicants requested another interview that would include the Supervisory Patent Examiner (SPE). Applicants were told that the SPE would be informed of their comments and concerns along with the request for another interview.